

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
J. J. WELCOME CONSTRUCTION
COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent,

STATE OF WASHINGTON,
DEPARTMENTS OF ECOLOGY and
NATURAL RESOURCES,

Intervenors.

PCHB Nos. 1103 and ³⁴~~1126~~¹
ORDER

A hearing on appellant's Motion to Dismiss came before the
Pollution Control Hearings Board, Art Brown, Chairman, W. A. Gissberg,
and Chris Smith on January 13, 1977 at Lacey.

Appellant was represented by its attorney, Robert P. Tjossem;
respondent was represented by its attorney, Keith D. McGoffin;

1 Intervenor Department of Ecology (hereinafter "DOE") was represented
2 by Robert V. Jensen, assistant attorney general; Intervenor Department
3 of Natural Resources was represented by Theodore O. Torve, assistant
4 attorney general.

5 Having considered the appellant's motion and supporting affidavit,
6 and the memorandum of the Department of Ecology and supporting affidavit,
7 and the Board's record in these matters, and having heard the arguments of
8 counsel, the Pollution Control Hearings Board concludes that the motion
9 must be granted for the reasons set forth below.

10 Respondent's Regulation 1, Article 8, Section 8.07 purports to
11 make it unlawful for a person to cause an outdoor fire for disposal of
12 wood waste generated by certain governmental land clearing projects
13 unless that person has demonstrated that:

14 . . . The total cost of disposing of wood waste
15 by means of a certified alternative is greater
16 than that per acre cost specified by the
Department of Ecology in WAC 18-12.

17 WAC 18-12 does not list or indicate the availability of any certified
18 alternate nor does it in any way deal with, indicate, or specify
19 the total per acre cost of disposing of wood waste. Simply put,
20 the DOE's regulation is meaningless. Because respondent's (PSAPCA)
21 regulation references the DOE regulation, it too is meaningless.
22 Contrary to the contention of the DOE, "clear advance notice" to
23 appellant of the certified alternative requirement cannot cure the
24 foregoing deficiencies in the regulations.

25 To the extent that the civil penalties are based on such
26 meaningless regulations, they must be vacated. Now therefore,

27 ORDER

1 IT IS ORDERED that the Motion to Dismiss is granted and the civil
2 penalties in these matters are vacated.

3 DATED this 17th day of January, 1977.

4 POLLUTION CONTROL HEARINGS BOARD

5 Art Brown

6 ART BROWN, Chairman

7 W. A. Gissberg

8 W. A. GISSBERG, Member

9 Chris Smith

10 CHRIS SMITH, Member